## PHNG LI-WAN lwn. PENTADBIR TANAH DAERAH BENTONG

MAHKAMAH TINGGI MALAYA, TEMERLOH
ROSLAN MAT NOR H
[RUJUKAN TANAH NO: CB-15-23-04-2023]
25 MAC 2024

**Abstrak** – *Pengapit bertugas menentukan kadar pampasan dalam suatu prosiding rujukan tanah di mahkamah; bukan memutuskan kadar pampasan. Sebaliknya, mahkamah mempunyai bidang kuasa kehakiman untuk memutuskan kadar pampasan. Mahkamah akan mendapat bantuan daripada pengapit-pengapit untuk memahami laporan-laporan tersebut dan perkara-perkara yang perlu diberi perhatian dalam mencapai jumlah pampasan yang sewajarnya. Oleh itu, pandangan pengapit-pengapit pada amalannya tidak didedahkan pada pihak-pihak.*

***UNDANG-UNDANG TANAH:*** *Pengambilan tanah – Pampasan – Amaun – Bantahan terhadap amaun pampasan – Amaun pampasan berkaitan kesan mudarat dan pemisahan tanah – Sama ada amaun pampasan oleh Pentadbir Tanah wajar – Pendapat pengapit-pengapit – Akta Pengambilan Tanah 1960, s. 38*

Ini adalah permohonan pemohon bawah s. 38 Akta Pengambilan Tanah 1960 ekoran daripada perintah Pentadbir Tanah Daerah Bentong yang memutuskan bahawa amaun pampasan adalah sebanyak RM1,698,620.20. Tujuan pengambilan tanah ialah untuk pembinaan laluan Rel Pantai Timur Daerah Bentong, Pahang Fasa 1 – Jajaran Utama. Pemohon menyatakan bahawa (i) amaun pampasan yang diberikan oleh Pentadbir Tanah berkaitan dengan kesan mudarat dan pemisahan tanah yang dialami oleh pemohon tidak dilakukan dengan sewajarnya; dan (ii) pengambilan tanah tersebut menyebabkan terputusnya hubungan antara tanah pemohon dengan Parcel A dan B yang mengganggu jalan masuk ke tanah tersebut. Sebaliknya, responden menyatakan bahawa (i) masih terdapat akses oleh pemohon di Bahagian B Parcel B walaupun terpisah daripada jalan. Dua lot yang berhampiran dengan tanah pemohon turut terlibat dengan pengambilan tanah yang melibatkan pemilik tanah yang sama. Oleh itu, tidak timbul isu pemisahan yang tidak membolehkan tanah tersebut diakses langsung atau terputus langsung aksesnya; dan (ii) ini tidak menyokong dakwaan pemohon bahawa ini telah mengurangkan nilai hartanah tersebut. Apatah lagi boleh menghalang sudut pandangan pemohon dari tanah tersebut. Terdapat perbezaan pendapat antara pandangan berkenaan tuntutan pecah pisah. Pengapit Kerajaan menyatakan perlu diberikan tambahan pampasan terhadap pecah pisah manakala pengapit swasta pula berpandangan itu tidak perlu diberikan kerana telah diambil kira dalam penentuan pecah pisah tersebut oleh Pentadbir Tanah apabila Pentadbir Tanah melakukan kekhilafan dalam

penentuan keluasan baki tanah. Sementara itu, berkenaan dengan kesan mudarat, pengapit Kerajaan dan swasta kedua-duanya menyatakan bahawa pampasan tambah tidak perlu diberikan kerana lot-lot yang terlibat adalah bersebelahan dan milik pemilik tanah yang sama.

**Diputuskan (jumlah pampasan yang diawardkan oleh Pentadbir Tanah dinaikkan kepada RM40,259.08):**

**(1)** Fakta yang tidak dapat dinafikan ialah dengan pengambilan tanah tersebut, telah berlaku pecah pisah. Jumlah pampasan yang sewajarnya perlu diberikan pada pecah pisah tersebut. Perhubungan antara Bahagian A dan Bahagian B adalah terkunci dengan pengambilan tanah tersebut. Ini sudah tentu akan mengurangkan nilai tanah tersebut. Ini juga tidak menggambarkan jumlah pampasan dalam award yang diberikan oleh Pentadbir Tanah. Amaun yang wajar diberikan kepada pemohon bawah pecah pisah ini adalah RM40,259.08. (perenggan 28-30)

**(2)** Tiada sebarang keterangan yang jelas ditunjukkan berkenaan kemudaratan yang dialami oleh pemohon ekoran daripada pengambilan tanah ini. Ini hanyalah andaian-andaian serta kemungkinan yang akan dialami ekoran pengambilan tanah tersebut. Ini tidak mencukupi untuk menunjukkan bahawa terdapat kesan mudarat dalam pengambilan tanah ini. Oleh itu, tiada kesan mudarat yang boleh dijadikan asas untuk diberikan pampasan berkenaannya. Mahkamah bersependapat dengan pandangan kedua-dua pengapit berkenaan isu ini. (perenggan 32 & 33)

**Kes-kes yang dirujuk:**

*Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC* ***(dirujuk)***

*Tegas Sejati Sdn Bhd v. Pentadbir Tanah Dan Daerah Hulu Langat & Anor And Another Appeal [2024] 4 CLJ 1 FC* ***(dirujuk)***

**Perundangan yang dirujuk:**

Land Acquisition Act 1960, ss. 12, 35, 37, 38, 40A(2), 40B, 40C, 47, First Schedule, Third Schedule

Land Acquisition (Cap 140) (FMS Enactment No. 22/1922), ss. 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

Federal Constitution, art. 13

**Sumber-sumber yang dirujuk:**

Anthony Dickey, *The Province And Function Of Assessors In English Courts*, *The Modern Law Review*, Vol 33, Issue 5 September 1970, 494

Noor Asyikeen Mohd Salleh dan Sik Cheng Peng, *Striking A Balance Between Public And Private Interests In Land Acquisition: A Cross-Jurisdictional Perspective*, 30(1) 2022 IIUMLJ 135-163

*Bagi pihak pemohon - Harold Tan Kok Leng & Jessica Wong Yi Sing; T/n Harold & Lam Partnership*

*Bagi pihak responden - Azizah Ahmad; Pejabat Penasihat Undang-undang Negeri Pahang*

*Dilaporkan oleh Lina E*

## PENGHAKIMAN

**Roslan Mat Nor H:**

**Pendahuluan**

**[1]** Ini adalah permohonan pemohon di bawah s. 38 Akta Pengambilan Tanah 1960. Ia adalah ekoran daripada perintah Pentadbir Tanah Daerah Bentong yang telah memutuskan amaun pampasan adalah sebanyak RM1,698,620.20 pada 7 September 2022.

**[2]** Pemohon melalui Borang N telah menyatakan bantahannya terhadap amaun tersebut adalah berkaitan dengan amaun pampasan.

**[3]** Tujuan pengambilan tanah ini ialah untuk pembinaan laluan Rel Pantai Timur (East Coast Rail Link – ECRL) Daerah Bentong, Pahang Fasa 1 - Jajaran Utama.

Luas tanah ialah 7.6941 hektar

Luas tanah diambil - 1.0370 hektar

Luas tanah baki A - 3.4104 hektar

Luas tanah baki B - 3.2467 hektar

**[4]** Pentadbir Tanah Daerah Bentong telah membuat penilaian yang dinyatakan dalam Borang G seperti berikut:

| | | |
|---|---|---|
| Lands | : | RM1,285,880 |
| Severance & injurious cost (A) | : | RM211,444.80 |
| Severance & injurious cost (B) | : | RM201,295.40 |
| | | RM1,698,620.20 |

**[5]** Pemohon telah tidak berpuas hati dengan nilai pampasan tersebut dan memfailkan permohonan rujukan tanah ini.

**Latar Belakang Ringkas Undang-undang Pengambilan Tanah**

**[6]** Undang-undang berkenaan Akta Pengambilan Tanah telah wujud di Malaysia semenjak tahun 1922. Misalnya, melalui Land Acquisition Chapter 140 (FMS Enactment No. 22/1922), Land Acquisition Enactment of the State of Johore 1936 dan Land Acquisition Ordinance of the Strait Settlement.

**[7]** Akta Pengambilan Tanah 1960 telah digubal pada 13 Oktober 1960. Tujuan penggubalan Akta ini dapat dilihat dalam Penyata Rasmi Parlimen Vol. II No. 22 bertarikh 12 September 1960 di mana Tun Abdul Razak, Timbalan Perdana Menteri ketika itu, menyatakan seperti berikut:

> Sir, I now turn to the provisions in this Bill which is before the House today, and in the first instance I would like to make it clear to the House that this is a Federal Bill introduced under Article 76(4) of the Constitution for the purpose of ensuring uniformity within all the States in the matter of compulsory land acquisition. This course has been agreed to by all State Governments concerned, and, upon the passage of this Bill through Parliament, this Act will repeal all existing State legislation upon land acquisition matters and replace them by a uniform system which, where it differs from the old, is, I hope, improved and simplified. This uniform system will come into operation in the States as soon as the Bill is passed, and it will not be necessary for any State Government to adopt this Act by a special motion in its own Legislature.
>
> Sir, as I have said, this is mainly a consolidating law and the features in which uniformity has now been secured and minor inconsistencies are fully explained in the lengthly Explanatory Statement attached to this Bill. As mentioned there have been no fewer than five separate laws relating to land acquisition and none of which was entirely satisfactory in itself. Therefore, a multiplicity of these minor changes have been necessary and this House will not wish me to go into further detail on these measures which are, in fact, a form of tidying-up without any really significant change and are all fully dealt with in the Explanatory Statement.

**[8]** Penelitian kepada Land Acquisition (Chap. 140) juga memperuntukkan tatacara pengendalian prosedur pendengaran oleh mahkamah berkenaan dengan rujukan tanah. Ia terdapat di bawah s. 22 hingga 40 Akta tersebut. Apa yang menarik terdapat juga peruntukan berkenaan dengan pelantikan pengapit seperti dinyatakan di bawah s. 25 Akta seperti berikut:

> 25. If the objection is in regard to the amount of compensation and the award of the Collector is not less than five thousand dollars the Court shall also appoint two assessors for the purpose of aiding the Judge in determining the objection. Such assessor may also be appointed in any other case in which the Court shall consider it desirable to make such appointment. Every person so appointed shall be legally bound to attend and serve as an assessor unless excused for some reason to be approved by the Judge.

**[9]** Pandangan pengapit juga perlu direkodkan oleh hakim dan sekiranya terdapat pandangan hakim yang berbeza dengan pengapit, pandangan hakim adalah diutamakan.

**[10]** Terdapat pandangan yang menyatakan bahawa Akta Pengambilan Tanah 1960 ini adalah dipengaruhi oleh Land Acquisition Act 1894 di India. Oleh yang demikian, terdapat banyak kes-kes daripada India yang digunakan dalam mengendalikan kes-kes di bawah Akta Pengambilan Tanah 1960. Penelitian lanjut bagi memahami sejarah undang-undang pengambilan tanah di Malaysia dapat dilihat dalam artikel bertajuk *Striking A Balance Between*

*Public And Private Interests In Land Acquisition: A Cross-Jurisdictional Perspective* oleh Noor Asyikeen Mohd Salleh dan Sik Cheng Peng, 30(1) 2022 IIUMLJ 135-163.

**[11]** Berdasarkan kepada tinjauan yang ringkas di atas adalah jelas menunjukkan bahawa undang-undang pengambilan tanah di negara ini telah wujud sebelum pengenalan Akta Pengambilan Tanah 1960. Ia diperkuatkan lagi dengan jaminan yang dinyatakan dalam Perlembagaan Persekutuan di bawah per. 13 Perlembagaan Persekutuan berkenaan dengan hak kepada harta seperti berikut:

> 13 Rights to property
>
> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

**[12]** Penelitian kepada Akta Pengambilan Tanah 1960 (Semakan 1992) menunjukkan keunikan undang-undang pengambilan tanah yang menggariskan tatacara pengambilan tanah dan secara komprehensif memperuntukkan format-format tertentu bagi sesuatu tindakan di bawah Akta Pengambilan Tanah 1960. Selain daripada itu, terdapat juga peruntukan di bawah s. 37 Akta tersebut yang memperihalkan permohonan oleh mana-mana pihak yang berkepentingan untuk membuat permohonan kepada mahkamah. Seksyen 37 Akta tersebut juga telah menetapkan perkara-perkara yang boleh dikemukakan di dalam permohonan tersebut. Seksyen 37 Akta Pengambilan Tanah 1960 menyatakan seperti berikut:

> 37 Application to Court
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
>
> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.
>
> (2) Where the total amount awarded in compensation does not exceed five thousand ringgit, the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

(3) Where the total amount of any award exceeds thirty thousand ringgit, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1).

**[13]** Begitu juga prinsip-prinsip yang perlu diambil perhatian dalam menentukan pampasan. Juga dinyatakan dalam Jadual Pertama Akta Pengambilan Tanah 1960 yang dibaca bersama dengan ss. 12, 35 dan 47 Akta Pengambilan Tanah 1960.

**[14]** Malahan di Jadual Ketiga Akta Pengambilan Tanah 1960 telah secara khusus memperihalkan tatacara prosedur dan keterangan di dalam kes-kes yang melibatkan rujukan tanah. Ia memperuntukkan seperti berikut:

THIRD SCHEDULE

[Section 45]

EVIDENCE AND PROCEDURE IN LAND REFERENCE CASES

1. Interpretation

In this Schedule, unless the context otherwise requires:

"applicant" means the person upon whose application in accordance with section 38 reference to the Court is made in respect of an objection under section 37;

"proceeding" means a proceeding in respect of an objection under section 37;

"valuer's report", in relation to the report by the valuer of one party to the proceeding, includes his reply to the report of the valuer of the other party to the proceedings.

2. Valuer's report and oral evidence

(1) The applicant's valuer's report alone must establish a *prima facie* case for the applicant.

(2) Oral evidence by the applicant's valuer shall only be adduced during cross-examination and re-examination, if any.

(3) The respondent's valuer's report must be sufficient to rebut the applicant's valuer's report.

(4) Subparagraph (2) shall apply to the respondent's valuer as it applies to the applicant's valuer.

3. Filing and service of valuer's report

(1) Each party to the proceeding shall, not less than seven days before the date of hearing, file in Court four copies of his valuer's report.

(2) Each party to the proceeding shall, not less than twenty-one days before the date of hearing, serve on the other party a copy of his valuer's report.

(3) Each party to the proceeding shall, not less than seven days before the date of hearing, serve on the other party and file in Court his valuer's reply to the other party's valuer's report.

4. Common plan

(1) Where the reports of both the applicant's and the respondent's valuers contain comparable sales plans, the applicant's valuer shall prepare a plan, to be known as the "common plan", incorporating the comparable sales plans in both such reports.

(2) The common plan shall be served on the respondent not less than seven days before the date of hearing.

(3) The common plan shall be filed in Court not less than four days before the date of hearing.

5. Evidence to be by way of affidavit except for valuer's report

(1) Except in the case of a valuer, the evidence of any other person shall be adduced by way of affidavits.

(2) Except for any statement in writing made or delivered by the applicant and included in or attached to Form O by which the matter is referred to the Court, subparagraph (1) shall also apply to the applicant.

(3) Except in the case of a valuer's report, any document to be tendered in evidence shall be tendered by way of an affidavit.

(4) The provisions in paragraph 3 as regards the manner and time of service and filing in Court of a valuer's report and reply shall apply to affidavits and affidavits in reply.

(5) The deponent may be called to be cross-examined.

(6) The party wishing to cross-examine a deponent shall give at least seven days' notice of his intention to do so.

6. Paragraphs 2, 3, 4 and 5 must be complied with

No report, affidavit or other document shall be admitted in evidence unless the provisions of paragraphs 2, 3, 4 and 5 are complied with.

7. Submissions

(1) Unless otherwise ordered by the Court, the final submissions in Court of the counsel for each of the parties to the proceeding shall be written.

(2) The Court shall determine the order, the manner and the time of service of the written submissions.

**[15]** Seterusnya, s. 40A Akta Pengambilan Tanah 1960 telah menyatakan bahawa apabila bantahan di hadapan mahkamah adalah berkaitan dengan jumlah atau amaun pampasan, mahkamah hendaklah melantik dua orang

pengapit bagi membantu hakim untuk mencapai amaun pampasan yang adil dan munasabah. Ini dinyatakan di bawah s. 40A(2) Akta tersebut seperti berikut:

> 40A Constitution of the Court
>
> (1) ...
>
> (2) Where the objection before the Court is in regard to the amount of compensation, the Court shall appoint two assessors (one of whom shall be a valuation officer employed by the Government) for the purpose of aiding the Judge in determining the objection and in arriving at a fair and reasonable amount of compensation.

**[16]** Seksyen 40B Akta Pengambilan Tanah 1960 pula memperuntukkan tentang tanggungjawab pengapit yang dilantik untuk menghadiri perbicaraan yang menyatakan seperti berikut:

> 40B Assessors
>
> (1) Every person appointed as an assessor under section 40A shall be legally bound to attend and serve as an assessor unless excused for some reason to be approved by the Judge.
>
> (2) Without prejudice to subsection (1), if an assessor fails to attend and serve as an assessor without written excuse by the Judge, the Court shall report the matter to the President of the Board of Valuers, Appraisers and Estate Agents for disciplinary proceedings to be taken against the assessor under the Valuers, Appraisers and Estate Agents Act 1981.
>
> (3) Without prejudice to subsection (1), if an assessor who is a valuation officer employed by the Government fails to attend and serve as an assessor without written excuse by the Judge, the Court shall report the matter to the Director General of the Valuation and Property Services Department for disciplinary proceedings to be taken against the assessor under the appropriate disciplinary regulations applicable to such officer.
>
> (4) If an assessor dies, or becomes incapable of acting, or is excused by the Judge, another assessor from the list referred to in subsection 40A(4) or (5), as the case may be, shall be appointed in his stead.
>
> (5) Every assessor shall receive a fee for his service as the Judge shall direct provided that such fee shall not exceed five hundred ringgit a day, or such higher figure as the Minister may, with the approval of the National Land Council, by notification in the *Gazette* prescribe.
>
> (6) The fee of an assessor shall be deemed to be costs in the proceeding.

**[17]** Seterusnya, s. 40C Akta Pengambilan Tanah 1960 pula menyatakan bahawa pandangan oleh setiap pengapit di bawah maudhu' pampasan yang dituntut oleh pihak yang berkepentingan hendaklah diberikan secara bertulis oleh pengapit dan hendaklah dicatatkan oleh hakim. Seksyen 40C Akta Pengambilan Tanah 1960 menyatakan seperti berikut:

40C Opinion of Assessors

The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.

**[18]** Kedudukan seorang pengapit jika ditinjau kepada amalan di mahkamah-mahkamah Inggeris dapat difahami dengan jelas seperti yang dinyatakan dalam artikel oleh Anthony Dickey bertajuk *The Province And Function Of Assessors In English Courts, The Modern Law Review Vol. 33,* Issue 5 September 1970, 494 seperti berikut:

Part II. The Function And Practice Of Assessors

Assessors do not, in the modern sense of the word, assess anything. The title of the office derives directly from the latin assessor, meaning one who sits with another, or an assistant, and in English law denotes a person who, by virtue of some special skill, knowledge or experience he possesses, sits with a judge during judicial proceedings in order to answer any questions which might be put to him by the judge on the subject in which he is an expert.

Although most of the cases on the function of assessors concern nautical assessors in Admiralty proceedings, the rules they lay down apply to assessors generally, for the function of assessors, unless modified by statute, is the same irrespective of the nature or status of the court or tribunal they may be assisting. References in cases to the function of nautical assessors may therefore be understood to apply generally to all assessors in relation to their own special skill or knowledge. What may differ, however, is the practice of different kinds of assessors, that is, the way in which they exercise their functions.

In some respects the function of assessors is similar to that of expert witnesses in that they are sources of information on matters concerning their own special skill or knowledge. Assessors, however, are not called by the parties, are not sworn, and cannot be cross-examined. Indeed their advice is both sought by and given to the court in private and is only disclosed to the parties at the court's discretion and then usually at the end of the case in the judgment.

**[19]** Mahkamah Persekutuan telah menjelaskan secara mendalam berkenaan dengan kedudukan pengapit dalam prosiding rujukan tanah melalui kes *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 seperti berikut:

Who are the assessors?

[36] At this juncture, it is necessary to firstly ascertain who the assessors are and what their duties may be in the land acquisition regime.

[37] Under the common law, the practice of appointing assessors could be traced back to the second half of the 18th Century when assessors were appointed to advice judges on nautical and technical issues in admiralty

proceedings (see *Folkes v. Chadd* (1782) 3 Doug KB 157; 99 ER 589; *Johnstone v. Sutton* [1775-1802] All ER Rep 170; (1786) 1 Term Rep 510; 99 ER 1225).

[38] The word 'assessor' is a Latin word, assessor, meaning one who sits with another, or who is an assistant. The term 'assessor' is used to designate a person who by virtue of some special skills, knowledge or experience he possesses, sits with a judge during judicial proceedings in order to answer any question which might be put to him by the judge on the subject in which he is an expert (see *The Beryl* (1884) 9 PD 137 and *Singleton Abbey (Owners) v. Paludina (Owners); The Paludina* [1926] All ER Rep 220; [1927] AC 16).

[39] Although they are sources of information on matters concerning their own special skill or knowledge, assessors are not to be treated as expert witnesses since their advice does not constitute evidence. They are not subject to cross-examination, especially when the assessors are appointed by the court instead of by the parties. In the words of Viscount Simon LC in *Richardson v. Redpath Brown & Co Ltd* [1944] 1 All ER 110 at p 113; [1944] AC 62 at p 70:

> To treat ... any assessor, as though he were an unsworn witness in the special confidence of the judge, whose testimony cannot be challenged by cross-examination and perhaps cannot even be fully appreciated by the parties until judgment is given, is to misunderstand what the true functions of an assessor are. He is an expert available for the judge to consult if the judge requires assistance in understanding the effect and meaning of technical evidence.

[40] Under the common law, the role of assessors is to help the judge to fully appreciate the specialist evidence taken. They 'take no part in the judgment whatever, they are not responsible for it, and have nothing to do with it' (see the decision of Brett MR in *The Beryl*).

[41] The use of assessors would be particularly beneficial and appropriate in complex matters. It is believed that the presence of persons having the requisite skill and knowledge assisting the Bench would win public confidence in the judicial system.

[42] In Malaysia, the use of court appointed assessors is not a novel practice. Nevertheless they are rarely used in both civil and criminal matters and perhaps the best known utilisation of their services is found in land matters. Assessors are appointed when there is a provision in a statute that warrants their appointment. The role and function of assessors are governed by the relevant statute.

[43] In fact, prior to 1995, Chapters XXI, XXII and XXIII of the Criminal Procedure Code ('the CPC') contained provisions relating to trials by jury and trials with the aid of assessors in the High Court. However the said provisions were deleted by the Criminal Procedure Code (Amendment) Act 1995 (Act A908). With the amendment, all criminal proceedings in the High Court thereafter shall be heard and disposed of before a single judge.

Court-appointed assessors in land reference proceedings

[44] The role and functions of assessors in land reference proceedings are predicated on matters of opinion and experience. Their appointment is governed by sub-s 40A(2) of the Act. The language of sub-s. 40A(2) of the Act is unequivocal in its provision that assessors form an integral part of the reference court, for otherwise, the land reference court would be not properly constituted.

[45] The appointment of the two assessors (one of whom shall be a valuation officer employed by the government) becomes mandatory when the objection referred to the court is with regard to the reasonable amount of compensation for the acquired land. In *The Royal Selangor Golf Club v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2012] 5 MLJ 364, the Court of Appeal speaking through Abdul Wahab Patail JCA held that:

> The land reference court is a creature of statute under the Land Acquisition Act 1960. On matters affecting compensation a judge sitting alone has no jurisdiction.

[46] As provided for in sub-s. 40A(2) of the Act, assessors are appointed by the court 'for the purpose of aiding the Judge in determining the objection and in arriving at a fair and reasonable amount of compensation'.

[47] This resembles the role and functions of assessors in the common law of providing assistance to the judge.

[48] Prior to 1984, the court was required to record the opinion of assessors which was given orally. However, by the present s 40C of the Act, assessors are required to give their opinion in writing in respect of claims for compensation which will then be recorded by the court.

Section 40C of the Act reads:

> The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.

**[20]** Ini bermakna pengapit adalah membantu mahkamah di dalam menentukan kadar pampasan di dalam suatu prosiding rujukan tanah di mahkamah. Pengapit tidak memutuskan kadar pampasan. Mahkamah yang mempunyai bidang kuasa kehakiman untuk memutuskan kadar pampasan. Pada kebiasaannya, pandangan pengapit akan dikemukakan kepada hakim untuk dipertimbangkan bersama-sama dengan laporan penilaian oleh pihak pemohon dan responden. Mahkamah akan mendapat bantuan daripada pengapit-pengapit untuk memahami laporan-laporan tersebut dan perkara-perkara yang perlu diberikan perhatian dalam mencapai jumlah pampasan yang sewajarnya. Oleh itu, pandangan pengapit-pengapit pada amalannya tidak didedahkan kepada pihak-pihak. Ini adalah sejajar dengan peranan pengapit-pengapit untuk membantu mahkamah dan tidak membuat apa-apa keputusan berkenaan jumlah pampasan.

**[21]** Ia dapat difahami kerana pihak yang bertanggungjawab untuk menjelaskan asas kepada pampasan yang diberikan oleh mahkamah ialah hakim dan bukannya para pengapit. Jika pandangan para pengapit didedahkan kepada pihak-pihak sebelum prosiding rujukan tanah dikemukakan, pandangan mereka akan dipertikaikan oleh pihak-pihak dan berkemungkinan menjurus kepada keadaan yang menimbulkan ketidakyakinan kepada kebolehan dan kebebasan para pengapit untuk memberikan pandangan mereka kepada hakim.

**[22]** Namun demikian, semasa menyediakan penghakiman ini, Mahkamah Persekutuan pada 29 Februari 2024 iaitu selepas kes rujukan tanah ini diputuskan pada 18 Januari 2024, telah memutuskan di dalam *Tegas Sejati Sdn Bhd v. Pentadbir Tanah Dan Daerah Hulu Langat & Anor And Another Appeal* [2024] 4 CLJ 1 yang menjelaskan mengenai kedudukan pengapit dan pandangan pengapit dengan menyatakan seperti berikut:

> [31] Section 45 of Act 486 requires all land reference proceedings to be conducted in open Court:
>
> > Proceedings to be in open Court
> >
> > 45. (1) Every proceeding under this Part shall take place in open Court.
>
> [32] In these appeals, the two assessors who were appointed sat throughout the reference proceedings. This is as required under section 40B. They would have had access to the valuation reports prepared, exchanged and tendered by the rivalling parties. They would have heard the testimonies of the witnesses called. Not only that, the High Court as well as the assessors would have had the opportunity to clarify. Upon conclusion of hearing evidence and submissions on the question of adequacy of compensation, in particular whether and if so, how compensation for costs of preliminary works, costs of termination of the contractor and consultant agreements should be computed, the assessors would have given their views on these various items, not merely on the principle or the right but also on quantum. These are all matters relevant in determining the matter of adequacy of compensation. That determination of compensation however, remains entirely with the learned Judge.
>
> [33] Although assessors attend reference proceedings, they do not determine the matters complained about, not even the amount of compensation – see section 40D and the deliberations of this Court in *Semenyih Jaya* (*supra*) and *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1, para [49] - [58]. They are merely there to aid the Court in that limited respect, that is, to offer their opinions on the heads of compensation. The Court consists of only the judge, sitting alone. This is evident from section 40A which must be read in the light of *Semenyih Jaya*:
>
> > 40A. (1) Except as provided in this section the Court shall consist of a Judge sitting alone.

[34] If judges are required to provide their reasons for arriving at any decision, all the more, the opinion of the assessors, which the law mandates must be in writing must be made available to the parties. Although these opinions are intended to assist the Court in arriving at a decision on the amount of compensation, it is imperative that parties have the opportunity to consider them and to respond, if necessary. At its most basic level, these opinions form and must be part of the records of the land reference proceedings, aside from the learned judge recording the fact that the written opinions were provided.

[35] ...

[36] ...

[37] Further, the question of adequacy of compensation can only be properly determined according to law if all concerned have had the opportunity to address the reasons, factors or circumstances which are relevant and necessary when computing or calculating that compensation. The opinions of the assessors who attend Court and assist the High Court judge in determining the matter of compensation so as to ensure that it is at the end of the day, adequate must thus be made known to the owners and those affected by the compulsory acquisition. The obligation to make known the reasons or factors extends to everyone who has any role to play in that decision, be it the judge or the assessors.

[38] Thus, the availability of these written opinions of the assessors can never be a matter of internal administrative arrangement. Land reference proceedings are open Court proceedings and it is integral to the rule of law that there is transparency and fairness not just in the conduct of those proceedings but in the manner any evidence, including opinion evidence is received and treated by the Court. The presence of these written opinions must be recorded by the judge hearing the land reference and should the judge see fit, even incorporate the entire or parts of those opinions into the determination. It may even be attached to the learned Judge's grounds, should that be seen as appropriate. But, once available, the written opinions must be provided to the parties. These opinions must be included into any record of appeal, in the event there is one. Otherwise, these written opinions are part of the records of the land reference proceedings at the High Court.

[39] Since it is obvious that there was non-compliance of section 40C in these appeals, that the written opinions were never made available to the parties or even called for by the Court of Appeal, the appeals must be allowed and the orders of the Courts below are set aside. The matter is remitted to the High Court for a rehearing before another judge.

**Asas Kepada Permohonan Pemohon**

**[23]** Pemohon dalam kes ini telah menyatakan bahawa amaun pampasan yang diberikan oleh Pentadbir Tanah berkaitan dengan kesan mudarat dan pemisahan tanah yang dialami oleh pemohon telah tidak dilakukan dengan sewajarnya. Ini adalah disebabkan terdapatnya pemutusan perhubungan di antara tanah pemohon dengan kawasan luar di antara Parcel A Lot 4638,

Lot 5764 dan Lot 5989 dengan Lot 7898. Pengambilan tanah tersebut telah menyebabkan terputusnya hubungan di antara tanah pemohon dengan Parcel A dan Parcel B yang mengganggu jalan masuk ke tanah tersebut.

**[24]** Sebaliknya, pihak responden menyatakan bahawa masih terdapat akses oleh pihak pemohon di Bahagian B Parcel B walaupun terpisah dari jalan namun dua lot yang berhampiran dengan tanah pemohon turut juga terlibat dengan pengambilan tanah yang melibatkan pemilik tanah yang sama. Oleh itu, tidak timbul pemisahan yang tidak membolehkan tanah tersebut diakses langsung atau terputus langsung aksesnya. Ini juga tidak dapat menyokong dakwaan pemohon bahawa ia telah mengurangkan nilai hartanah tersebut. Apatah lagi boleh menghalang sudut pandang pemohon dari tanah tersebut.

**[25]** Pendapat pengapit Kerajaan:

Pecah Pisah (Severance)

Akibat pengambilan tersebut menyebabkan tanah baki menjadi 2 (dua) bahagian. Bagi bahagian A adalah seluas 3.4104 hektar dan bahagian B adalah seluas 3.2467 hektar.

Penilai responden telah mengesorkan tuntutan tersebut hanya pada Baki A sahaja. Saya kurang bersetuju dengan hanya Baki A sahaja diberikan elaun kerana baki B masih luas dan tidak wujud gangguan terhadap pecah pisah. Perlu juga diambil kira, lot-lot lain yang berdampingan dengan lot subjek seperti lot 5764 dan 5958 yang dimiliki oleh orang yang sama.

Kadar tanah sebagaimana yang dituntut oleh pemohon adalah pada kadar RM1,240,000.00 sehektar bagi Baki A, dan 20.968% bagi Baki B. Kadar pampasan peratusan yang tinggi adalah tidak munasabah memandangkan lot subjek juga berdampingan dengan lot 5764 dan lot 5958 yang dipunyai oleh pemilik yang sama. Oleh yang demikian, saya berpendapat pampasan terhadap severance adalah seperti berikut:

Baki A

3.4101 hektar x RM1,370,00 sehektar x 10 % = RM422,889.60

Kesan Mudarat (Injurious Affection)

Akibat pengambilan tersebut menyebabkan tanah baki menjadi 2 (dua) bahagian. Baki bahagian A adalah seluas 3.4104 hektar dan bahagian B adalah seluas 3.2467 hektar.

Penilai responden tidak mengsyorkan tuntutan tersebut, kerana ia mempunyai baki tanah yang masih besar memandangkan lot-lot bersebelahan seperti Lot 5764 dan Lot 5958 adalah pemilik tanah yang sama. Saya juga berpandangan demikian dan tidak wujud faktor **injurious affection** terhadap tanah baki. (penekanan ditambah)

**[26]** Pendapat pengapit swasta:

Pecah Pisah

Akibat pengambilan Lot 4638 telah terpecah kepada 2 iaitu tanah baki A dan tanah baki B. Akibat berlaku pecah pisah, kesan kepada tanah baki A dan baki B tetap ada tetapi kadar peratusan susutnilai sahaja berbeza. Penilai responden hanya memberi susutnilai kepada tanah baki A sahaja. Saya berpendapat tanah baki B perlu juga diberi sedikit susutnilai kerana tanah yang tidak sekata. Penilai pemohon pula menuntut kadar susutnilai yang terlalu tinggi ke atas tanah baki A dan tanah baki B. Saya berpendapat dan mencadangkan seperti berikut:

(a) Tanah Baki A

3.4104 hektar X RM1,240,000 sehektar X 5% = RM211,444.80.

(b) Tanah Baki B

0.2467 hektar X RM1,240,000 sehektar X 6% = RM241,554.48.

**JUMLAH = RM542,999.28**

Pihak Pentadbir Tanah telah memberikan award sebanyak RM412,740.20. Saya berpendapat penambahan award sebanyak RM40,259.08.

Penjejasan Tanah

Penilai pemohon telah memasukkan tuntutan akibat penjejasan tanah bersama dengan pecah pisah dan Penilai responden juga tidak mencadangkan apa-apa pampasan yang perlu diberikan. Oleh yang demikian tiada apa-apa pampasan yang perlu diberikan.

Pihak pemohon gagal membuktikan tuntutan di atas bagi menyakinkan pihak mahkamah untuk menimbangkan sema tuntutan di atas. Tiada bukti berbentuk fizikal seperti resit, sebut harga ada apa-apa penyata yang membuktikan pihak pemohon mengalami kerugian akibat daripada sebahagian tanah diambil.

Pihak Pentadbir Tanah telah memberikan pampasan atau award akibat kehilangan jalan masuk ke Lot 7898. Saya berpendapat Lot 7898 tidak terkesan dan tidak kehilangan jalan masuk kerana lot yang bersebelahan iaitu Lot 5764 dan Lot 5958 masih boleh dimasuki dan pemilik tanah adalah pemilik yang sama. Walau apapun keputusan yang diberikan oleh Pentadbir Tanah boleh dikekalkan.

## Dapatan Mahkamah

**[27]** Berdasarkan kepada pandangan pengapit Kerajaan dan pengapit swasta adalah didapati bahawa terdapat perbezaan pandangan berkenaan dengan tuntutan berkaitan pecah pisah di mana pengapit Kerajaan menyatakan perlu diberikan tambahan pampasan terhadap pecah pisah. Sebaliknya, pengapit swasta pula berpandangan ia tidak perlu diberikan disebabkan ianya telah diambil kira dalam penentuan pecah pisah tersebut oleh Pentadbir Tanah apabila Pentadbir Tanah telah melakukan kekhilafan di dalam penentuan keluasan baki tanah. Oleh itu, tiada penambahan perlu diberikan.

**[28]** Dalam kes ini, mahkamah berpendapat bahawa berkenaan dengan pecah pisah penelitian perlu dilihat kepada pelan bersama yang dikemukakan dan kedudukan tanah tersebut. Satu fakta yang tidak dapat dinafikan ialah dengan pengambilan tanah tersebut telah berlaku pecah pisah. Ia turut diakui oleh laporan penilaian oleh pihak responden apabila mengesahkan bahawa terdapatnya pemisahan kepada dua bahagian iaitu Bahagian A dan Bahagian B bagi Lot 4638 dan ia menyebabkan kesukaran kepada pemilik tanah untuk menguruskan bagi tanah yang terpisah akibat daripada pengambilan tanah tersebut.

**[29]** Mahkamah ini berpendapat bahawa jumlah pampasan yang sewajarnya perlu diberikan kepada pecah pisah tersebut. Mahkamah ini bersetuju dengan hujahan pemohon bahawa perhubungan di antara Bahagian A dan Bahagian B adalah terkunci dengan pengambilan tanah tersebut. Ia sudah tentu akan mengurangkan nilai tanah tersebut. Ia juga tidak digambarkan jumlah pampasan tersebut di dalam award yang diberikan oleh Pentadbir Tanah. Mahkamah ini bersetuju dengan pandangan pengapit Kerajaan bahawa sejumlah amaun yang sewajarnya diberikan kepada pemohon di bawah pecah pisah ini. Jumlah sebanyak RM40,259.08 adalah wajar dalam kes ini.

**[30]** Sementara itu, berkenaan dengan kesan mudarat adalah didapati pengapit swasta dan Pengapit Kerajaan bersepakat menyatakan bahawa tiada perlu diberikan sebarang pampasan tambahan. Ia adalah disebabkan lot-lot yang terlibat adalah bersebelahan iaitu Lot 5764 dan Lot 5958 adalah merupakan milik pemilik tanah yang sama.

**[31]** Dalam hal ini, mahkamah juga meneliti laporan yang dikemukakan oleh penilai responden yang menyatakan bahawa kesan mudarat tidak wajar dipertimbangkan kerana tiada sebarang keterangan yang menunjukkan fungsi tanah tersebut telah terjejas. Ini adalah disebabkan kategori tanah itu masih lagi dalam zon pertanian dan tiada sebarang perancangan pembangunan ke atas tanah tersebut sebelum tarikh perwartaan. Sebaliknya, laporan penilaian oleh pemohon menyatakan terdapatnya kehilangan pendapatan berkenaan penanaman pokok durian di tanah tersebut. Di samping itu, terdapatnya kesan bunyi dan gegaran ekoran daripada pembinaan landasan kereta api di laluan projek ECRL tersebut.

**[32]** Mahkamah ini berpendapat bahawa tiada sebarang keterangan yang jelas ditunjukkan berkenaan kemudaratan yang dialami oleh pemohon ekoran daripada pengambilan tanah ini. Ia hanyalah merupakan andaian-andaian serta kemungkinan yang akan dialami ekoran daripada pengambilan tanah tersebut. Pada hemat mahkamah ini, ia tidak mencukupi untuk menunjukkan bahawa terdapat kesan mudarat dalam pengambilan tanah ini. Oleh itu, mahkamah ini berpendapat tiada kesan mudarat yang boleh dijadikan asas untuk diberikan pampasan berkenaannya. Mahkamah ini sependapat dengan pandangan kedua-dua pengapit berkenaan isu ini.

**[33]** Seterusnya, berkenaan dengan kadar pampasan, pemohon telah memaklumkan kepada mahkamah bahawa ia tidak menjadi isu dalam kes ini. Oleh itu, jumlah pampasan yang diberikan oleh Pentadbir Tanah adalah dikekalkan.

**[34]** Akhirnya, setelah meneliti dan menilai laporan penilai Kerajaan dan penilai swasta serta pandangan pengapit Kerajaan dan pengapit swasta, mahkamah berpendapat jumlah pampasan yang diawardkan oleh Pentadbir Tanah Daerah Bentong dinaikkan kepada RM40,259.08.